IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4240 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

ABHINAV CO-OPERATIVE HSG. SOC.LTD.

Versus

PANKAJKUMAR BABULAL DOSHI

Appearance:

1. Special Civil Application No. 4240 of 1999

MR RAVINDRA SHAH for Petitioner No. 1

MR PK JANI for Respondent No. 1

RULE SERVED for Respondent No. 2-4

MR RAVINDRA SHAH for Petitioner No. 1

MR PK JANI for Respondent No. 1

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 09/10/2002

ORAL JUDGEMENT

The short facts of the case are that the

petitioner is a Coop.Housing Society duly registered under the provisions of Gujarat Cooperative Societies Act (hereinafter referred to as "the Act"). One Laxmanbhai Chaganbhai Chaudhary was the member of the society and he was allotted Flat No.B/14/S and said Laxmanbhai Chaganbhai expired on 25.12.1986 without making any nomination as per the say of the society. However, as per respondent No.1, wife of Laxmanbnhai, namely, Daxaben Laxmanbhai was the only legal heir and after the death of Laxmanbhai she inherited the said property and said Daxaben also continued to represent the property, i.e. the aforesaid flat. It is the case of the respondent No.1 that the share certificates were transferred on the name of Daxaben Laxmanbhai Chaudhary being the legal heir of the deceased Laxmanbhai Chaudhary since she was the wife. However, the society has, in the present petition, disputed the said aspects. Primafacie, it appears that the said contention of the society is not supported by record because on 12.7.92 when the resolution came to be passed, copy whereof is produced at page 113 of the compilation of the petition it was resolved interalia that at present the member is Daxaben Laxmanbhai Chaudhary and the permission was granted for transfer of flat and share certificates to Pankajkumar Babulal Joshi, the respondent No.1 herein. As per the petitioner society the said resolution No.3 dated 12.7.92 which was reflected in the original minute book of the society is not signed any authenticated office bearer of the society. However, the case of the society is that on account of aforesaid resolution No.3, dated 12.7.92 passed by the society the respondent No.1 by relying on the same has purchased the property of the society, i.e. flat No.B/14/S from Daxaben Laxmanbhai Chaudhary vide sale deed, copy whereof is produced at Annexure H at page 114 of the compilation of the petition. The aforesaid sale deed came to be executed on 19.8.92 and thereafter it is the case of the respondent No.1 that the society also accepted him as the successor in title of the aforesaid property of the society being Flat No.B/14/S and the respondent No.1 also continued to attend the meetings of the society being the representative as the successor in title.

2. It is the case of the respondent No.1 that on 9.8.94 when the respondent No.1 went for depositing the maintenance amount of the aforesaid flat in the office of the society the same was not accepted by the office bearers of the society and therefore the respondent No.1 had to address a letter dated 11.8.94 to the President of the society. Thereafter, there was further correspondence and ultimately the respondent No.1

submitted an application to the District Registrar, Cooperative Societies, Mehsana on 20.1.1997. The District Registrar, Cooperative Societies, Mehsana upon the application of the respondent No.1, heard the society and on 29.5.97 passed order whereby he directed the society to issue the receipt on the name of respondent No.1 and he further directed that the amount which is already deposited by the respondent No.1 in the account of the Society in the State Bank of India should be given credit of and he further directed that pursuant to the resolution of the earlier committee the respondent No.1 be admitted as the member of the society and the share certificates may be transferred in the name of the respondent No.1. The petitioner society preferred revision being Revision Application No.72/97 before the Additional Registrar (Appeals) under section 155 of the Act against the aforesaid order of the Dist.Registrar. The learned Addl.Registrar ultimately after hearing both sides passed order on 10.6.98 whereby it was found by the learned Additional Registrar hearing the appeal that since the property is not transferred and since the District Registrar has not mentioned the section under which power has been exercised, the order of the Dist.Registrar deserves to be quashed and set aside and therefore the revision was allowed. The respondent No.1 herein preferred revision against the order of the Addl.Registrar (Appeals) before the State Govt and the State Govt.ultimately after hearing both sides passed order on 13.4.99 whereby the State Govt found that pursuant to the resolution dated 12.7.92 the registered sale deed dated 19.8.92 of the flat is executed and after the said sale deed the society continued to recognise the respondent No.1 as the representative and thereafter once the society has passed resolution it is not open to the society to back out from the same and therefore the State Govt found that the order of the Dist.Registrar was proper and therefore the State Govt while confirming the order of the Dist.Registrar set aside the order passed by the Addl.Registrar (Appeals) and allowed the refund. It is under these circumstances the petitioner has preferred this petition.

3. Mr.Ravindra Shah, Ld.advocate for the petitioner has submitted that no record was ever produced before the Dist.Registrar when the first order passed by the Dist.Registrar and when it is confirmed rather without examination of the record. Mr.Shah submitted that in any event the loan amount is outstanding and so long as the said loan amount is not paid the committee has no power to to sanction the transfer of shares on the name of respondent No.1. Mr.Shah relied on the Bye-law NO.19 for

such purpose. Mr.Shah also submitted that in the order of the Dist.Registrar there is no reference to the reply submitted by the society and the Dist.Registrar has also not stated that under which section of the Act he has exercised the power and he submitted that in any event it would be a dispute under section 96 of the Act and the Dist.Registrar will have no authority or jurisdiction to entertain such application or to pass the order.

4. On behalf of respondent No.1 Mr.Jani submitted that the outstanding loan was not the subject matter at all and the matter was only pertaining to collection of maintenance amount and other amounts by way of contribution which was being recovered by the society. Mr.Jani submitted that the respondent No.1 by relying on the resolution dated 12.7.92 has got the sale deed executed in his favour and not only that but from time to time on number of occasions the respondent No.1 has continued to represent the interest of original member. The amounts are paid, from time to time, and the same was given credit in the bank account of the society. He, therefore, submitted that in any event the directions given by the Dist.Registrar for the purpose of issuance of receipt and to give credit of and for transfer of share certificates is legal and valid and therefore the same is rightly confirmed by the State Govt. On behalf of District Registrar and Addl.Registrar (Appeals), State Govt Ms.Manisha Shah, Ld.AGP has supported the order passed by the authority.

5. Considering the above, it appears that the contention raised by Mr.Shah that the record is not produced or examined is illfounded and is incorrect on the face of it. A perusal of the orders passed by the Dist.Registrar, Addl.Registrar(Appeals), State Govt show that there is recital in the order that the record of the case is taken into consideration, and therefore, it can not be said that the orders have been passed by the lower authorities without considering the record. In the same manner, there is no substance in the contention of Mr.Shah that there is no reference to oral submissions before the Dist.Registrar in the order of the Dist.Registrar. Firstly, this petition is essentially under Article 227 of the Constitution and it is not open to the parties to raise new contentions which are not raised before the lower authorities. The perusal of the order passed by the Addl.Registrar and the State Govt show that it does not transpire as to any such contention was ever raised and therefore the petitioner can not be allowed to raise such contention now in the present petition. Even if the petitioner is allowed to raise such contention, then also in my view, same would not in

any manner change the merits of the case because in the order of the District Registrar representation made on behalf of the society is taken into consideration and the District Registrar has mainly relied on the resolution which was already passed by the earlier body on 12.7.92. There is no dispute on the point that said resolution is not recorded in the original minute book of the society. However, Mr.Shah wanted to contend that since the said resolution which is recorded in the original minute book of the society is not signed by any authenticated office bearer of the society same can not be said to be an authenticated resolution, and hence, the authority could not have relied on the same. I am afraid such contention can be accepted. So far as the society is concerned, it is a fact that the resolution is there on record. So far as the respondent No.1 is concerned, he has acted pursuant pursuant to said resolution. Not only that but the perusal of the said resolution shows that the share certificates are standing in the name of Daxaben Laxmanbhai Chaudhary and the society has no objection against sale of the flat and transfer the share certificates to the purchaser. Upon the resolution of the society and not only that but after the sale deed is executed, for some time, the society also continued to accept the purchaser as a member of the society and as a representative of the original shareholder and therefore it can hardly be contended by the society that it will not act pursuant to the resolution passed on 12.7.92 by the earlier body. In my view once the resolution is passed by the Managing Committee of the society, it binds to the society and the society can not back out from the same, more particularly, when the purchaser and the member has acted pursuant to the said resolution. Mr.Shah also tried to persuade me that by stating that earlier management of the society was with the organizer and the developer of the society and the office bearers were dummy members of the society he submitted that the record of the society is handed over only in the year 1994 and therefore he submitted that there is additional ground of not accepting the said resolution dated 12.7.92. In my view, as such there is no challenge throughout in the proceedings that the management of the society was with dummy office bearers of developer or organiser, but even if such is the stand, then so long as that resolution passed by the office bearers of the society is there in the record of the society, it binds the society and such resolution shall remain in operation unless such resolution is set aside by the competent authority. So far as public at large is concerned, they would be guided by the authenticated record of the society and if the rights of the parties are alterted on

account of such resolutions, it can hardly be contended by the society subsequently vis-a-vis rights of other members that it is not bound by the same. At this stage it would be worthwhile to refer to some of the observations made at para 20 by this court in the matter of Shantiniketan Coop.Hsg.Soc.Ltd vs Dist.Registrar, Coop.Societies reported in 2002(2) GLR 1768:

> "The second aspect which is required to be considered is the voluntary action of the petitioner society and its conduct. In the present case, as observed above, it has come on record that the petitioner society has voluntarily not only accepted the impugned instructions/order, dated 2.11.1998 but has gone a step further by passing the resolution at its Managing Committee meeting, dated 18.11.1998 and further voluntary act of transferring the shares in the name of respondent Nos 2 & 3 and admitting them as members of the society by implementing the resolution dated 18.12.1998 and not only that but after December, 1998 for a period of about 19 months the respondent Nos 2 & 3 are permitted to function as members of the society without any challenge whatsoever by the petitioner society until the present petition is preferred."

The court further observed as under:

> "If the party to voluntary action is permitted to challenge the order/instructions subsequently under the pretext of breach of principles of natural justice or under the pretext of any illegality the same would frustrate the basic intention of advancing cause of justice. As observed earlier, in view of the provisions of the Act, more particularly, sections 22 to 36 of the Act, once the person is admitted as member the status of the member can not be extinguished or removed or expelled by the society, save ane except, the power and procedure laid down under the Act. If the law does not provide for taking away the membership right of a person who is admitted as a member, the society can not be permitted to challenge the status subsequently by raising contentions that the person concerned was not eligible to be admitted as member or that they acted upon the instructions which were issued in breach of principles of natural justice. As a matter of fact, it has come on record that the petitioner society itself is a

party to the voluntary action of admitting the respondent Nos 2 & 3 as members, and therefore, the conduct of the petitioner society disentitled it to invoke the writ jurisdiction of this court. Even if it is assumed for the sake of argument that there is breach of principles of natural justice or breach of provisions of law or procedure then also in view of the fact that the society is party to the voluntary action and the rights of the parties are altered on account of such voluntary action the court could refuse to exercise its discretionary jurisdiction/power under Articles 226/227 of the Constituion."

6. It is true that the facts of the present case are slightly different in as much as in the present case the respondent No.1 is not admitted as member or the share certificate is not transferred in his name, but so far as the voluntary action of the society is concerned there is a resolution dated 12.7.92 passed by its own Committee and not only that but there is further voluntary action of allowing the respondent No.1 to continue to represent the property and further voluntary action of accepting amounts from time to time from the respondent No.1 as a representative of the property in question. This aspect is coupled with the fact that the respondent No.1 has altered his position upon the aforesaid voluntary action of the society and has also paid consideration to Daxaben while purchasing the property. In such a situation, in my view, if the society is allowed to back out from its own resolution it might result into encouraging the unfair practice on the part of the society and it can never be the purpose or intention of forming a cooperative housing society. The attempt made for distinguishing the power of the managing committee is also without any force in as much as the interpretation given to a Bye-law No.19 would apply only in respect of the outstanding amount of the society and it would not apply to any transaction of loan which is obtained by the society from any bank. As a matter of fact, collection of money by the society from its members by way of contribution or maintenance is different than that of taking loan for the purpose of its members from the financial institutions. Such collection of loan or any amount of loan outstanding to the society by the petitioner is not the subject matter of the proceedings all throughout. The only subject matter of the proceedings was the amount to be collected by the society towards contribution from concerned members. Even in the resolution, dated 12.7.92 it has been mentioned that the transfer shall be effected as per Govt.rules and same

shall be subject to the liability of the society and therefore it can not be validly contended by Mr.Shah that if the transfer is permitted the rights and liabilities earmarked to the transaction of loan would get altered. Even in the order of the first authority i.e. the District Registrar the direction given is for the purpose of maintenance amount or anyother amount and therefore it is to be read as the amount of maintenance or any other contribution which the society has to recover from the concerned member. So far as the issuance of receipt is concerned it can hardly be contended that if the amount is recovered any person would not issue receipt and more particularly when the society is a legal entity. If the amount is recovered it is the duty of the society to give credit of and also to issue receipt for such purpose to the concerned member from whom the amount is recovered. So far as direction for transfer of share certificates is concerned, as observed earlier in view of resolution, dated 12.7.92 the society can not back out from the same and hence direction for transfer of share certificate, in my view, is perfectly legal and valid.

7. In view of the above discussion, it appears that the order passed by the District Registrar was legal and valid and the same is therefore rightly confirmed by the State Govt while allowing the revision. Hence, the order passed by the State Govt is legal and valid and same is not required to be disturbed by this court while exercising power under Articles 226/227 of the Constitution of India.

8. In view of the above, this petition fails and same is therefore rejected. Rule is discharged. There shall be no order as to costs.

9.10.02 (JAYANT PATEL,J)